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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 WENDY CHICCINO,

7 Plaintiff,

8 v.

9 NANCY BERRYHILL, Deputy Commissioner
10 of Social Security Operations,

11 Defendant.

Case No. 3:17-cv-05713-TLF

ORDER REVERSING DEFENDANT'S
DECISION TO DENY BENEFITS AND
REMANDING FOR FURTHER
PROCEEDINGS

12 Wendy Chiccino has brought this matter for judicial review of defendant's denial of her
13 application for supplemental security income (SSI) benefits. The parties have consented to have
14 this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c), Federal Rule of Civil
15 Procedure 73; Local Rule MJR 13. For the reasons set forth below, the Court reverses the
16 Commissioner's decision denying benefits and remands for additional proceedings.
17

18 I. BACKGROUND
19

20 Ms. Chiccino has been treated for chronic pain since 2007. Dkt. 8, Administrative Record
21 (AR) 929-932. She fell while in a grocery store on August 29, 2007; she fell in a work-related
22 injury on September 5, 2010; and she had an automobile accident in the spring of 2013. AR 288-
23 315, 563, 929. She was diagnosed by Dr. Roham Moftakhar, M.D., based on an MRI study, with
24 C5 disc osteophyte compressing the C6 nerve root on the left. AR 952. On January 31, 2011, she
25 underwent neck surgery, anterior cervical discectomy fusion, to repair the fifth and sixth cervical
26 vertebrae. AR 372-73. She filed an application for SSI benefits on July 15, 2013. AR 23. She

1 alleged that she became disabled beginning September 5, 2010. *Id.* That application was denied
2 on initial administrative review and on reconsideration. *Id.* A hearing was held before an
3 administrative law judge (ALJ) on September 16, 2015. AR 42-70. Ms. Chiccino and a
4 vocational expert appeared and testified.

5 The ALJ found that Ms. Chiccino could perform jobs that exist in significant numbers in
6 the national economy, and therefore that she was not disabled. AR 23-35 (ALJ decision dated
7 January 22, 2016). The Appeals Council denied Ms. Chiccino's request for review on May 26,
8 2017, making the ALJ's decision the final decision of the Commissioner. AR 1. Ms. Chiccino
9 appealed that decision in a complaint filed with this Court on September 8, 2017. Dkt. 4; 20
10 C.F.R. § 416.1481.

11
12 Ms. Chiccino seeks reversal of the ALJ's decision and remand for further administrative
13 proceedings, arguing that the ALJ misapplied the law and lacked substantial evidence for her
14 decision. The alleged errors concern the ALJ's failure to seek additional expert opinions on the
15 medical record and her reasoning in discounting Ms. Chiccino's statements about the severity of
16 her symptoms. For the reasons set forth below, the undersigned concludes that the ALJ failed to
17 properly apply the law and substantial evidence does not support her decision. Consequently, the
18 undersigned reverses the decision to deny benefits.
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21 II. STANDARD OF REVIEW AND SCOPE OF REVIEW

22 The Commissioner employs a five-step "sequential evaluation process" to determine
23 whether a claimant is disabled. 20 C.F.R. § 416.920. If the ALJ finds the claimant disabled or not
24 disabled at any particular step, the ALJ makes the disability determination at that step and the
25 sequential evaluation process ends. *See id.*
26

1 The five steps are a set of criteria by which the ALJ considers: (1) Does the claimant
2 presently work in substantial gainful activity? (2) Is the claimant's impairment (or combination
3 of impairments) severe? (3) Does the claimant's impairment (or combination) equal or meet an
4 impairment that is listed in the regulations? (4) Does the claimant have residual functional
5 capacity (RFC), and if so, does this RFC show that the complainant would be able to perform
6 relevant work that he or she has done in the past? And (5) if the claimant cannot perform
7 previous work, are there significant numbers of jobs that exist in the national economy that the
8 complainant nevertheless would be able to perform in the future? *Keyser v. Comm'r of Soc. Sec.*
9 *Admin.*, 648 F.3d 721, 724-25 (9th Cir. 2011).

11 The Court will uphold an ALJ's decision unless: (1) the decision is based on legal error;
12 or (2) the decision is not supported by substantial evidence. *Revels v. Berryhill*, 874 F.3d 648,
13 654 (9th Cir. 2017). Substantial evidence is "such relevant evidence as a reasonable mind might
14 accept as adequate to support a conclusion." *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir.
15 2017) (quoting *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d 573, 576 (9th Cir.
16 1988)). This requires "more than a mere scintilla," though "less than a preponderance" of the
17 evidence. *Id.* (quoting *Desrosiers*, 846 F.2d at 576). If more than one rational interpretation can
18 be drawn from the evidence, then the Court must uphold the ALJ's interpretation. *Orn v. Astrue*,
19 495 F.3d 625, 630 (9th Cir. 2007). The Court may not affirm by locating a quantum of
20 supporting evidence and ignoring the non-supporting evidence. *Id.*

23 The Court must consider the administrative record as a whole. *Garrison v. Colvin*, 759
24 F.3d 995, 1009 (9th Cir. 2014). The Court is required to weigh both the evidence that supports,
25 and evidence that does not support, the ALJ's conclusion. *Id.* The Court may not affirm the
26 decision of the ALJ for a reason the ALJ did not rely on. *Id.* Only the reasons identified by the

1 ALJ are considered in the scope of the Court's review. *Id.*

2 3 III. THE ALJ'S DUTY TO DEVELOP THE RECORD

4 First, Ms. Chiccino contends that the ALJ erred in evaluating her residual functional
5 capacity (RFC) based on the medical evidence. In particular, she contends that the ALJ failed to
6 develop the record. She contends that the ALJ should have asked another physician to assess Ms.
7 Chiccino's physical abilities based on a physical examination, her medical records, or both. Dkt.
8 10, pp. 3-8. She asserts that the physicians whose opinions the ALJ relied on did not have access
9 to notes from several physical therapy visits in 2013 and 2014. Dkt. 10, p. 3. Those visits
10 followed an April 2013 auto accident, which Ms. Chiccino contends worsened her neck,
11 shoulder, and arm impairments. *Id.*

12
13 A claimant has the burden to provide evidence of her disability. 42 U.S.C. § 423(d)(5)
14 ("An individual shall not be considered to be under a disability unless he furnishes such medical
15 and other evidence of the existence thereof as the Secretary may require."); 20 C.F.R. §
16 404.1512(a)(1) ("In general, you have to prove to us that you are blind or disabled."). The
17 hearing is not adversarial in nature; the ALJ has a duty to develop the record regardless whether
18 the claimant is represented by counsel and must inform himself or herself about the facts that are
19 relevant. *DeLorme v. Sullivan*, 924 F.2d 841, 849 (9th Cir. 1991). "An ALJ's duty to develop the
20 record further is triggered only when there is ambiguous evidence or when the record is
21 inadequate to allow for proper evaluation of the evidence." *Mayes v. Massanari*, 276 F.3d 453,
22 459-60 (9th Cir. 2001).

23
24 Ms. Chiccino contends that the ALJ's failure to seek out medical opinions that considered
25 Ms. Chiccino's condition after her car accident means the RFC failed to account for evidence of
26 additional neck, shoulder, and upper extremity limitations. Dkt. 10, pp. 3-8. The Commissioner

1 responds that Ms. Chiccino waived her argument that the record was inadequate by failing to
2 raise it at the ALJ level or with the Appeals Council. Dkt. 11, p. 11. The Commissioner points
3 out that the ALJ asked Ms. Chiccino twice whether Ms. Chiccino knew of additional records the
4 ALJ should consider, and both times Ms. Chiccino's counsel answered "no." *Id.*; see AR 46, 49.

5 The ALJ conducts a non-adversarial hearing and therefore, on judicial review, appellate
6 rules of waiver and default concerning evidence that was not placed into the record may not be
7 appropriate; the Court is mindful that "the ALJ has a duty to fully and fairly develop the record
8 and to assure that the claimant's interests are considered." *Webb v. Barnhart*, 433 F.3d 683, 687
9 (9th Cir. 2005) (*quoting*, *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 2001)). Yet this Court
10 does not need to decide whether Ms. Chiccino waived her argument. As discussed below, the
11 ALJ erred in discounting Ms. Chiccino's testimony. Therefore, the Court will remand to the
12 Commissioner for further proceedings. Those proceedings will necessarily require the
13 Commissioner to re-examine the medical evidence. In doing so, the Commissioner should be
14 diligent in seeking to obtain all medical records that are probative of Ms. Chiccino's
15 impairments. *See Webb v. Barnhart*, 433 F.3d at 687; *DeLorme v. Sullivan*, 924 F.2d at 849.

18 IV. THE ALJ'S CONSIDERATION OF MS. CHICCINO'S TESTIMONY

19 Ms. Chiccino also contends that the ALJ did not provide adequate reasons to reject her
20 testimony on the severity of her symptoms.

21 Questions of credibility¹ are solely within the control of the ALJ. *Sample v. Schweiker*,
22 694 F.2d 639, 642 (9th Cir. 1982). The Court should not "second-guess" this credibility
23

24
25 ¹ Since the ALJ's ruling in this case, the Social Security Administration issued a ruling to "'eliminat[e] the use of the
26 term "credibility" from our sub-regulatory policy, as our regulations do not use this term' and to 'clarify that
subjective symptom evaluation is not an examination of an individual's character' but instead was meant to be
consistent with 'our regulatory language regarding symptom evaluation.'" *Trevizo v. Berryhill*, 871 F.3d 664, 678
n.5 (9th Cir. 2017) (*quoting* SSR 16-3p (2016)). As the Ninth Circuit explained, the new

1 determination. *Allen v. Heckler*, 749 F.2d 577, 580 (9th Cir. 1984). In addition, the Court may
2 not reverse a credibility determination where that determination is based on contradictory or
3 ambiguous evidence. *See id.* at 579.

4 To reject a claimant's subjective complaints, the ALJ must provide "specific, cogent
5 reasons for the disbelief." *Lester v. Chater*, 81 F.3d. 821, 834 (9th Cir. 1995) (citation omitted).
6 Unless affirmative evidence shows the claimant is malingering, the ALJ's reasons for rejecting
7 the claimant's testimony must be "clear and convincing." *Lester*, 81 F.2d at 834.
8

9 Here, Ms. Chicchino testified about her activities as follows: She does the dishes in the
10 morning, then has to rest. AR 50. She tries to vacuum but her arm usually hurts too much to
11 finish. *Id.* She cooks and does laundry but it exhausts her. *Id.* She shops for groceries with her
12 roommate on weekends, and this takes about an hour. AR 50-51. She goes to drug and alcohol
13 treatment for two hours each week. She reads the Bible, watches television, and meditates. AR
14 51. She has a laptop and hopes to get her GED. *Id.* She texts her son and roommate about
15 groceries they need. AR 52.
16

17 Ms. Chicchino further testified that she has constant, sharp pain in her shoulder and back.
18 AR 53-54. The pain worsens when she lifts her right arm to shoulder height or pushes a vacuum.
19 AR 53-55. She drops things. AR 62. She also has constant pain in her neck that worsens if she
20 sleeps wrong, as well as pain in her legs and pain and weakness in her lower back. AR 55-56. To
21 be comfortable, she must frequently change between sitting and standing. AR 62.
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24 ruling makes clear what our precedent already required: that assessments of an individual's testimony by an
25 ALJ are designed to "evaluate the intensity and persistence of symptoms after [the ALJ] find[s] that the
26 individual has a medically determinable impairment(s) that could reasonably be expected to produce those
symptoms," and not to delve into wide-ranging scrutiny of the claimant's character and apparent
truthfulness.

Id. (emphasis added).

1 Ms. Chiccino testified that providers have recommended shoulder surgery, but that “I just
2 have not found the time;” that she “give[s] up” because of her pain and the difficulty of finding
3 transportation; and that she finds neck surgery “scary” and the results uncertain. AR 52. She also
4 testified that she knows she is not taking pain medication correctly but does not “want to be
5 throughout the day in a daze.” AR 57. She said, “I’m scared, so I only take two of them at night.”
6 *Id.*

7
8 The ALJ incorporated some of these limitations into the RFC. She found that Ms.
9 Chiccino “can lift and/or carry twenty pounds occasionally and ten pounds frequently;” that Ms.
10 Chiccino “can occasionally push/pull” with her right arm; and that she cannot reach overhead
11 with her right arm but “can occasionally reach overhead with” her left arm. AR 27. The ALJ
12 partially credited Ms. Chiccino’s testimony about her symptoms but found her statements about
13 their “intensity, persistence and limiting effects . . . not entirely credible,” citing “the reasons
14 explained in this decision.” AR 28.

15
16 The ALJ then surveyed the medical record, including objective medical evidence,
17 treatment records, and medical opinions pertaining to Ms. Chiccino’s physical condition. AR 28-
18 31. The ALJ wrote again that she did “not find the claimant’s subjective report of pain to be
19 credible to the extent alleged for the reasons cited in this decision, including the inconsistency
20 with the objective medical evidence, discussed throughout this decision.” AR 31. The ALJ then
21 reviewed Ms. Chiccino’s recent treatment history, which includes prescriptions of pain
22 medications and encouragement to pursue physical therapy. AR 32.

23
24 The ALJ wrote that Ms. Chiccino “appears to be active during the day.” AR 32-33. She
25 noted that Ms. Chiccino testified that she reads the Bible, watches television, does laundry and
26 washes the dishes, and uses a laptop and cell phone. *Id.* The ALJ also wrote that, in contrast to

1 Ms. Chiccino's testimony about severe pain in her neck and shoulder and leg pain and weakness,
2 "many of [Ms. Chiccino's] treatment notes indicate generally benign findings including noting
3 that the claimant was moving well." AR 33 (citing August-November 2013 treatment notes, AR
4 743, 923, 927).

5 Ms. Chiccino asserts that the ALJ failed to clearly state any reasons for rejecting her
6 testimony. The Commissioner responds that the Court can infer three reasons from the ALJ's
7 discussion: that the ALJ discounted Ms. Chiccino's testimony because the medical record did not
8 support it, because Ms. Chiccino failed to pursue treatment without a good reason, and because
9 Ms. Chiccino's activities show that she was more functional than she claimed. Dkt. 11, p. 7
10 (citing AR 27-33).

11 The Court agrees with the Commissioner that, while the ALJ discussion was not a picture
12 of clarity, the ALJ's "path may reasonably be discerned." *See Molina v. Astrue*, 674 F.3d 1104,
13 1121 (9th Cir. 2012). The Court concludes, however, that the ALJ's reasons for discounting Ms.
14 Chiccino's testimony were not clear and convincing, and that substantial evidence does not
15 support them.

16 First, the ALJ could not reject Ms. Chiccino's testimony about the severity of her pain
17 based solely on a lack of objective support. *See Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir.
18 2005) ("[A]fter a claimant produces objective medical evidence of an underlying impairment, an
19 ALJ may not reject a claimant's subjective complaints based solely on a lack of medical evidence
20 to fully corroborate the alleged severity of pain."). But "the medical evidence is still a relevant
21 factor in determining the severity of the claimant's pain and its disabling effects." *Rollins v.*
22 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).
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1 Nonetheless, the ALJ’s finding that Ms. Chiccino’s complaints were inconsistent with the
2 medical evidence in unsupported by the hearing record. There are a large number of objective
3 indications in the medical records that Ms. Chiccino suffered from severe neck, shoulder, and
4 arm conditions. For example, interpretation of a September 2014 MRI by Dr. Ly Ngoc Huynh,
5 Radiologist at Southwest Washington Medical Center, found: “Posterior rim rent type partial-
6 thickness articular surface tear of the distal infraspinatus;” “Moderate distal subscapularis
7 tendinopathy;” “Moderate acromial clavicular degenerative joint disease. Small ossicles within
8 the region of the joint space and capsule compatible with old injury;” and “Trace
9 subacromial/subdeltoid bursitis.” AR 839-40.

11 Ms. Chiccino’s physical therapists performed numerous tests throughout the relevant
12 period. They found that Ms. Chiccino had: “[l]imited tolerance to strengthening” and an
13 “irritable” back and shoulder condition, “with frequent muscle spasms during treatment,” AR
14 844, 856, 869, 871, 873; “[t]ightness and trigger points” in her neck and back muscles, AR 846;
15 limited range of motion in the neck and shoulders, with “pain in all directions,” AR 853, 860;
16 pain extending down her arms, AR 860 (“Difficulty performing ceiling punch with 1 pound
17 weights.”), 885 (signs and symptoms consistent with radiculopathy in her right arm); and, in
18 general, persistent pain that showed little improvement from physical therapy, AR 854, 856, 858,
19 866, 869, 871.

21 Eun Yung Yi, M.D., diagnosed Ms. Chiccino on October 30, 2014 with cervicalgia, a
22 partial tear in the right rotator cuff, and right shoulder pain. AR 931. Although the record also
23 contains opinions from examining and treating physicians who expressed difficulty locating a
24 source of Ms. Chiccino’s pain, AR 668, 923, 927, this alone would not justify rejecting her
25 subjective testimony. *See Burch*, 400 F.3d at 680.
26

1 The other two reasons implied by the ALJ are also insufficient. The Commissioner
2 asserts that the ALJ reasonably found that Ms. Chiccino's testimony was inconsistent with her
3 failure to pursue recommended treatment. A claimant's failure to assert a good reason for not
4 seeking treatment "can cast doubt on the sincerity of the claimant's pain testimony." *Fair v.*
5 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). The ALJ here noted certain treatment that Ms.
6 Chiccino was recommended and that she either did not pursue (shoulder surgery) or did not
7 follow correctly (pain medication). AR 32. The ALJ also recounted the reasons Ms. Chiccino
8 gave for these failures: she had difficulty getting a ride and found surgery "scary" and that she
9 "did not want to be in a daze during the day" because of medication. AR 32.

11 The Commissioner's reliance on this discussion fails for several reasons: First, it is
12 unclear whether the ALJ actually relied on this as a reason to reject Ms. Chiccino's testimony.
13 The ALJ did not make a finding that Ms. Chiccino's failure to pursue treatment made her less
14 credible. *See* AR 32. The Commissioner now asks the Court to infer this from the ALJ's vague
15 discussion; but that discussion does not constitute a "specific, cogent reason[]" to disbelieve Ms.
16 Chiccino. *See Lester*, 81 F.2d at 834. The Court cannot affirm the ALJ on a basis she did not rely
17 on. *Garrison*, 759 F.3d at 1010.

19 Second, for the ALJ to reject a claimant's testimony based on her failure to follow
20 recommended treatment, a treating source must have prescribed that treatment and it must be
21 "clearly expected to restore capacity to engage in any [gainful activity]." SSR 82-59. The ALJ
22 did not cite any such prescription here and instead appeared to rely on Ms. Chiccino's *own*
23 *testimony* that shoulder surgery had been recommended to her and that she was not following
24 medication prescriptions. AR 32.

26 And third, the ALJ did not indicate that she considered Ms. Chiccino's stated reasons for

1 failing to follow recommended treatment, let alone find that those were not “good reasons.” *See*
2 *Fair*, 885 F.2d at 603. Likewise, the ALJ made no finding and cited no evidence to indicate that
3 surgery would have been effective at treating Ms. Chiccino’s shoulder injury. *See Warre v.*
4 *Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006). For all these reasons, any
5 reliance by the ALJ on Ms. Chiccino’s failure to pursue treatment was improper.
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7 The Commissioner asserts, as another reason for upholding the ALJ’s decision to reject
8 Ms. Chiccino’s testimony, that the ALJ properly found Ms. Chiccino’s daily activities were
9 inconsistent with her stated symptoms and limitations. Dkt. 11, p. 6. This argument fails because
10 the record again lacks substantial evidence for the ALJ’s reasoning.

11 Claimants do not need to show they are “utterly incapacitated in order to be disabled.”
12 *Revels v. Berryhill*, 874 F.3d 648, 667 (9th Cir. 2017). Activities such as childcare, washing
13 dishes, house cleaning, shopping, running errands, feeding pets, and other common domestic
14 responsibilities, do not detract from a claimant’s credibility regarding her overall disability. *Id.* at
15 667-68. An ALJ may rely on a claimant’s daily activities to support an adverse credibility finding
16 when those activities contradict the claimant’s subjective complaints or are transferable to a work
17 setting and the claimant spends a “substantial part of her day” on them. *Smolen v. Chater*, 80
18 F.3d 1273, 1284 & n.7 (9th Cir. 1996); *see Orn*, 495 F.3d at 639; *Trevizo*, 871 F.3d at 682.
19

20 Here, the record does not support the ALJ’s implicit finding that Ms. Chiccino’s
21 activities—reading, watching television, doing laundry, and washing dishes, and using a laptop
22 and cell phone—contradict her subjective complaints. *See* AR 32-33. The ALJ’s inference from
23 these activities that Ms. Chiccino “appears to be active during the day” is not a reasonable one.
24 *See* AR 32-33. The activities the ALJ cited are not the type of physically demanding activities
25 that could reasonably be found to contradict Ms. Chiccino’s statements about severe limitations.
26

1 See *Orn*, 495 F.3d at 639 (“We agree with *Orn* that reading, watching television, and coloring in
2 coloring books are activities that are so undemanding that they cannot be said to bear a
3 meaningful relationship to the activities of the workplace.”). Moreover, a disability applicant
4 should not be penalized for attempting to lead a normal life. See *Reddick v. Chater*, 157 F.3d
5 715, 722 (9th Cir. 1998).

6
7 Nor would the record support findings that Ms. Chiccino’s activities are transferable to a
8 work setting and that Ms. Chiccino spends a “substantial part of her day” on them, even if the
9 ALJ had made such findings. See *Smolen*, 80 F.3d at 1284 & n.7. Many home activities are not
10 easily transferable to a work environment, “where it might be impossible to periodically rest or
11 take medication.” *Trevizo*, 871 F.3d at 682. The Ninth Circuit in *Trevizo v. Berryhill* found that
12 to be the case for a claimant whose “childcare responsibilities permit her to rest, take naps, and
13 shower repeatedly throughout the day, all of which would be impossible at a traditional full-time
14 job.” 871 F.3d 664, 682 (9th Cir. 2017). The same reasoning applies to Ms. Chiccino, whose
15 activities do not include childcare and involve a minimal amount of housework and thus appear
16 to be less demanding than the claimant’s activities in *Trevizo*. See 871 F.3d at 682.

17
18 The ALJ thus failed to give clear and convincing reasons to reject Ms. Chiccino’s
19 testimony about severely limiting pain in her neck and shoulder and pain and weakness in her
20 legs. These errors require reversal. See *Lester*, 81 F.3d at 834.

21 22 V. REMEDY

23 Plaintiff does not specifically argue whether this case should be remanded for an award
24 of benefits, or in the alternative, remanded for further administrative proceedings. Dkt. 10, 12.
25 “The decision whether to remand a case for additional evidence, or simply to award benefits[,] is
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1 within the discretion of the court.” *Trevizo*, 871 F.3d at 682 (quoting *Sprague v. Bowen*, 812 F.2d
2 1226, 1232 (9th Cir. 1987)).

3 A direct award of benefits would be warranted if the following conditions are met: First,
4 the record has been fully developed; second, there would be no useful purpose served by
5 conducting further administrative proceedings; third, the ALJ’s reasons for rejecting evidence
6 (claimant’s testimony or medical opinion) are not legally sufficient; fourth, if the evidence that
7 was rejected by the ALJ were instead given full credit as being true, then the ALJ would be
8 required on remand to find that the claimant is disabled; and fifth, the reviewing court has no
9 serious doubts as to whether the claimant is disabled. *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th
10 Cir. 2017) (amended January 25, 2018); *Revels*, 874 F.3d at 668.

12 If an ALJ makes an error and there is uncertainty and ambiguity in the record, the district
13 court should remand to the agency for further proceedings. *Leon*, 880 F.3d at 1045 (quoting
14 *Treichler v. Comm’r of Social Sec. Admin.*, 775 F.3d 1090, (9th Cir. 2014). If the district court
15 concludes that additional proceedings can remedy the errors that occurred in the original hearing,
16 the case should be remanded for further consideration. *Revels*, 874 F.3d at 668.

18 As discussed above, the ALJ failed to provide legally sufficient reasons for discounting
19 plaintiff’s testimony about her limitations and severity of symptoms. Accordingly, issues remain
20 regarding the evidence in the record concerning plaintiff’s functional limitations, and therefore
21 serious doubt remains as to whether plaintiff is in fact disabled. Remand for further consideration
22 of those issues is warranted. Specifically, on remand the Commissioner shall re-evaluate
23 plaintiff’s testimony, and shall re-evaluate the medical evidence, including any additional
24 relevant medical evidence that plaintiff or the ALJ submits.
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26

1 CONCLUSION

2 Based on the foregoing discussion, the Court finds the ALJ improperly determined Ms.
3 Chiccino to be not disabled. The Commissioner's decision to deny benefits therefore is
4 REVERSED and the matter is REMANDED to the Commissioner for further proceedings.

5 DATED this 9th day of August, 2018.

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Theresa L. Fricke
10 United States Magistrate Judge
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